



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/574,721

11/29/2006

Ewald Schneider

1-17295

1917

1678 7590 12/09/2008
MARSHALL & MELHORN, LLC
FOUR SEAGATE - EIGHTH FLOOR
TOLEDO, OH 43604

EXAMINER

LEE, DORIS L

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

12/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/574,721	SCHNEIDER, EWALD	
	Examiner	Art Unit	
	Doris L. Lee	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. All outstanding objections and rejections, except for those maintained below, are withdrawn in light of applicant's amendment filed on July 29, 2008.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. The new grounds of rejection set forth below are necessitated by applicant's amendment filed on July 29, 2008. In particular, claims 13-16 in which alternative combinations have been amended to necessarily contain all components recited. This combination of limitations was not present in the original claims. Thus, the following action is properly made final.

Double Patenting

4. **Claims 11,12, 14-19** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-5, 7, 9, and 11-12 of copending Application No. 10/553,259 in view of Sugino et al (US 5,895,607).

The rejection is adequately set forth in paragraph 4 of the Office Action mailed on April 29, 2008 and is incorporated here by reference.

Claim Rejections - 35 USC § 112

5. **Claims 13 and 14** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appropriate corrections are required.

Regarding claim 13, there is an internal inconsistency which causes a conflict between the limitation (A) " selected from the group consisting of homo- and

Art Unit: 1796

copolyamides" and the limitation (B) "the periodical units of which are derived from aliphatic amines, aliphatic dicarboxylic acids and aliphatic amino carboxylic acids, the amino carboxylic acids also being able to be used in the form of their lactams". If the homopolyamides is chosen as from limitation (A), it cannot meet the limitations recited in (B), because (B) necessarily defines a copolymer. The scope of the claims is construed to read on the embodiments of homopolymer such as nylon 6.

Regarding claim 14, it is suggested that the word "and" be inserted between "...from at least one aromatic dicarboxylic acid, from one or more aliphatic dicarboxylic acids," and "from one or more aliphatic and cycloaliphatic diamines" to more clearly delineate the acids from the diamines amines.

Claim Rejections - 35 USC § 103

6. **Claims 11-15 and 17-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Sugino et al (US 5,895,607)** in view of **Kleiner et al (US 5,773,556)** in view of **Scheibelhoffer et al (US 5,122,569)**.

The rejection is adequately set forth in paragraph 6 of the Office Action mailed on April 29, 2008 and is incorporated here by reference.

7. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Sugino et al (US 5,895,607)** in view of **Kleiner et al (US 5,773,556)** in view of **Scheibelhoffer et al (US 5,122,569)** as applied to claim 11 above, further in view of **Tamura et al (US 6,355,717)**.

Regarding claim 16, Sugino teaches that the partly aromatic polyamides can be made from many types and combinations of diamine and carboxylic acids (col. 4, line 5-17).

However, Sugino fails to teach that the acids are terephthalic acid and isophthalic acid and adipinic acid and that the diamine is hexamethylene diamine.

Tamura teaches that aromatic polyamides can be made from adipinic, terephthalic and isophthalic acids and hexamethylene diamine (col. 1, lines 55-65). It would have been obvious to a person of ordinary skill in the art at the time of the invention, to use the adipinic, terephthalic and isophthalic acids and hexamethylene diamine of Tamura in the partly aromatic polyamides of Sugino. Case law holds that the selection of a known material based on its suitability for its intended use supports prima facie obviousness. *Sinclair & Carroll Co vs. Interchemical Corp.*, 325 US 327, 65 USPQ 297 (1045).

Response to Arguments

8. The amendments overcome the 35 USC 112 2nd paragraph rejection of Claims 12-18 and thus the rejection filed in Office Action mailed on April 29, 2008 over these claims have been withdrawn. However, some of the amendments have created new 35 USC 2nd paragraph rejections which have been presented above.

9. Applicant's arguments filed July 29, 2008 have been fully considered but they are not persuasive.

Double patenting rejection:

Art Unit: 1796

10. **Applicant's argument:** The Examiner's combination of Sugino with the copending application does not yield the present invention as Sugino teaches the use of red phosphorus.

Examiner's response: Sugino is used only to teach the aliphatic polyamide component of the composition. Although red phosphorus is the preferred flame retardant, Sugino teaches that any flame retardant may be used (col. 5, lines 50-55) and therefore any flame retardant includes the flame retardant in the co-pending application.

Rejections under 35 USC 103:

11. **Applicant's argument:** Sugino requires the use of red phosphorus in making its flame retardant composition. There is nothing in Kleiner which would overcome the deficiency of the Sugino reference as discussed above.

Examiner's response: Sugino is used only to teach the aliphatic polyamide component of the composition. Although red phosphorus is the preferred flame retardant, Sugino teaches that any flame retardant may be used (col. 5, lines 50-55) and therefore any flame retardant includes the flame retardant Kleiner which meets the claimed limitation of the flame retardant.

12. **Applicant's argument:** Examiner cite the Scheibelhoffer reference to show the use of a preferred colorant, again, the Sugino reference utilizes red phosphorus as a flame retardant which would limit the attainable colors to those dark colors incurring from the use of the red phosphorus.

Examiner's response: Modified Sugino does not have the red phosphorus flame retardant because Sugino teaches that any flame retardant can be combined with the polymeric composition. Kleiner teaches that the flame retardant that meets the claimed limitations as presently claimed can be added to a polyamide material as set forth in the rejection above. Scheibelhoffer teaches the amount of colorant that can be used in the composition.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doris L. Lee whose telephone number is (571)270-3872.

Art Unit: 1796

The examiner can normally be reached on Monday - Thursday 7:30 am to 5 pm and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Doris L Lee/
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796